

STATE OF MAINE  
Board of Overseers of the Bar  
Grievance Commission  
File No. 92-S-258

**BOARD OF OVERSEERS OF THE BAR**

**Petitioner**

**REPORTS OF PROCEEDINGS,  
FINDINGS, CONCLUSIONS  
AND DISPOSITION**

v.

**PHILIP L. INGENERI, ESQ.**  
**of Bangor, Maine**

**Respondent**

This matter came on for hearing on the petition of the Board of Overseers of the Bar on February 9, 1995 at the office of the Overseers of the Bar in Augusta, Maine. The hearing was convened at 10:00 A.M. EST and was open to the public for the purpose of determining if the evidence supported the imposition of a reprimand of Respondent, or if probable cause existed for the filing of an information before the Court.

Proper notice having been given, the hearing was conducted before Panel C of the Grievance Commission comprised of David B. Soule, Jr., Chairman, Marc V. Schnur and Keith A. Powers, Esq. The Board was represented by Assistant Bar Counsel, Geoffrey S. Welsh, Esq. The Respondent was present and was represented by Kevin M. Cuddy, Esq. No objection was raised as to the composition of the panel. There were no pending motions.

Board Exhibits 1 through 25, inclusive (including Exhibits 5A, 22A and 23 A) attached to the petition were admitted by stipulation. In addition, Board Exhibits 26, 27, 28, and 29 were admitted. Respondent's Exhibits 1 through 7 were admitted. Respondent, prior to hearing, admitted the allegations contained in the Petition in Paragraphs 1, 2, 4 through 7 inclusive, 9 through 19 inclusive, 21 through 26 inclusive and 28 through 42 inclusive. Respondent contests the allegations contained in Paragraphs 3, 8, 20, 27, and 43 of the Petition.

Witnesses were sworn by the Chairman of the Panel. The Panel heard testimony from the Respondent, Philip L. Ingeneri, John B. Cole and the complainant, Clifford Dumont.

## **FINDINGS OF FACT**

1. Respondent, Philip L. Ingeneri, Esq. was at all times relevant hereto, an attorney, duly admitted to and engaging in the practice of law in the State of Maine with an office in Bangor, Maine.
2. In late May of 1990, Clifford Dumont hired the Respondent to represent him in a foreclosure action brought by Fleet Bank of Maine against Dumont and which had reached a point where Mr. Dumont's deposition had been scheduled and a motion for Summary Judgment had been filed. Mr. Dumont, until that point in the proceedings had represented himself and had filed an answer to the foreclosure. No engagement letter was signed by the parties nor was there anything prepared in writing which described the scope of the services to be provided by Respondent.
3. Beginning in November, 1990, Respondent was also representing Dumont on a Forcible Entry and Detainer action (FED) related to the Fleet foreclosure and involving the same piece of real estate.
4. The foreclosure action was settled by an agreement between Fleet Bank and Dumont on July 2, 1990 and finally signed by all parties on July 27, 1990. The settlement agreement required a payment to be made by Dumont on or before November 1, 1990. Immediately after the settlement, Respondent submitted a bill to Dumont for the foreclosure services and has testified that, in his mind, his services relative to the foreclosure were finished.
5. He did continue to represent Dumont on the FED action until February of 1991 when he received a letter from Dumont unequivocally terminating his representation on that matter.
6. Although the testimony is confused, it is clear that during the period from May of 1990 to February of 1991, Dumont and respondent discussed formally and informally the process of the foreclosure and Dumont mentioned several of the notices he had received.
7. Dumont failed to make the payment required by his settlement agreement on November 1, 1990. As a result, the bank held a foreclosure sale on or about December 7, 1990 at which the bank was the successful bidder.
8. Subsequently, on or about December 17, 1990, the bank filed a Report of Disbursement of Foreclosure Sale Proceeds and a Motion for the Issuance of a Writ for Deficiency. (Board Exhibit #7).
9. On January 16, 1991, an execution was issued against the Dumonts for deficiency in the amount of \$62,676.92. Although there is correspondence in the record indicating that the Respondent was copied with the Report of Sale and the Writ of Execution as well as other correspondence from the Bank's attorney to the Court, there is no evidence that

Respondent received those copies or was otherwise aware of the existence of those documents in early 1991.

10. During the year 1991, Dumont went to several different lawyers to pursue the prospect of overturning the deficiency judgment or possibly the foreclosure itself. In April of 1992, Respondent had been requested to send a copy of Dumont's file to Attorney Jeffrey Rosenblatt and had done so. After Rosenblatt was dismissed, in June of 1992, Dumont hired John B. Cole, Esq. to represent him.
11. On June 3, 1992 Cole sent the Respondent a letter requesting information and a copy of the file relating to the foreclosure. On July 21, 1992, Cole sent a follow-up letter requesting a response to his earlier letter. On August 24, 1992, Cole sent another letter to Respondent. On September 4, 1992, Respondent sent a letter to Cole indicating a willingness to copy the file if his costs were reimbursed but without answering the specific questions posed by Cole. On November 3, 1992, Respondent forwarded a copy of the file to Cole and responded to his questions. On March 3, 1993, Cole forwarded to Ingeneri an affidavit for his signature with regard to his recollections about the foreclosure process. This affidavit would assist Dumont in his attempt to overturn the deficiency judgment execution. The affidavit was never signed and Respondent failed to respond to this request or to answer further questions posed by Cole. Respondent's deposition was taken subsequently as a result of his failure to answer the questions raised by Cole informally.
12. On October 31, 1992, Dumont complained to Bar Counsel about the conduct of Respondent.
13. After an initial response to the Complaint, on February 3, 1993, Bar Counsel requested additional information from Respondent. Since no Response was forthcoming, Bar Counsel again asked for further information by letter of March 18, 1993. Respondent's reply of March 29, was not responsive to the questions asked and a complete response was not received by Bar Counsel until August 2, 1993.

### CONCLUSIONS

We find that even though the attorney client relationship between Respondent and Dumont was effectively terminated on February 20, 1991, the obligation to the client continues beyond that point in time as to matters which occurred during the period of representation. We therefore find that when requested by attorney Cole to provide information regarding that period of time when Respondent represented Dumont, he had a reasonable obligation to at least respond to Cole and to provide such information as he was able in a reasonable time. Dumont's efforts to attach the deficiency judgment would be aided materially by Respondent's answer to requests for information and signing a suitable affidavit concerning alleged deficiencies in the foreclosure process. While we recognize that Respondent had already responded to at least one request to provide Dumont's file to another attorney and that further requests placed a burden on his resources, the failure to respond at all to these reasonable requests for over five (5) months, especially considering

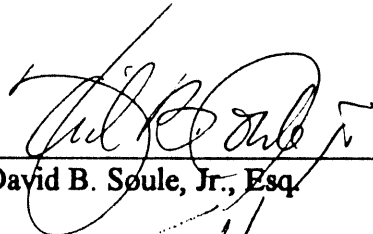
the time sensitive nature of those requests, is a violation of Rule 3.6 (a)(3). This is more than a mere discourtesy, as claimed by Respondent.


We further find that Respondent's failure to respond adequately to Bar Counsel's inquiries constitutes a violation of Rule 2(C).

### **DISPOSITION**

After reaching its conclusions, the Panel reviewed Respondent's disciplinary record and found that Respondent was suspended in 1981 for violations of, inter alia, Rule 3.6 (a)(3) and Rule 2(C). Based upon the evidence and the record before it, the findings of fact, and the prior disciplinary record of Respondent, Panel C determines that the appropriate disposition of this petition is that the Respondent should be and is hereby reprimanded.

Dated: April 11, 1995

  
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David B. Soule, Jr., Esq.

  
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Marc V. Schnur

  
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Keith A. Powers, Esq.